IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5941 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 NO

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STATE OF GUJARAT THRO'DIRECTOR

Versus

TAKHUJI KESHUJI CHAVDA

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Appearance:

1. Special Civil Application No. 5941 of 2001

MR DIGANT P JOSHI AGP for Petitioner No. 1

MR TR MISHRA for Respondent No. 1

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CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 11/01/2002

C.A.V. JUDGEMENT

1. By this petition under Articles 226 and 227 of the Constitution, the Director of the Employees State Insurance Corporation has challenged the order of the

Labour Court, Ahmedabad in Recovery Application No.3413 of 1991 whereby the petitioner is directed to pay Rs.1,11,805/- as being the overtime payments due to him. The amount is ordered to be paid with 6% interest from the date of the application, i.e. 3.10.1991, within 30 days of the order with additional amount of Rs.1,500/- as costs.

2. The monetary claim of the respondent was based on the factual premise that he had worked for extra 4 hours on regular basis for a period of 73 months from 1.8.1980 to 31.8.1986. After recording and appreciation of evidence, the Labour Court has found that the delay, if any, in preferring the claim was fully explained by pendency of the earlier proceedings; that it was proved that the respondent had worked for 12 hours daily and hence his claim for overtime wages was fully justified for the part of the period during which he had so worked and that a reasonable and sustainable claim of the respondent was not properly considered by the petitioner despite an order in another Recovery Application No.2733 of 1984.

3. Faced with the aforesaid findings of fact recorded after due appreciation of evidence, the learned Assistant Government Pleader reiterated and reagitated the issue of delayed claim and submitted that even in absence of any prescribed period of limitation in the law, such stale and outdated claims ought not to be entertained by the Labour Court in view of the obvious difficulties for the employer in preserving and producing relevant oral and documentary evidence in rebuttal.

4. The petitioner itself in another similar case had succeeded before the learned single Judge of this Court on the basis of the aforesaid spacious plea and the delay was held to be fatal in claiming overtime wages. That judgment having been carried in appeal in Letters Patent Appeal No.984 of 1996, a Division Bench of this Court (Coram: J.N.Bhatt and A.M.Kapadia, JJ.) reversing the judgment observed as under:

> "....In our opinion, the approach of the learned single Judge, with due respect, is not in consonance with or compatible to the relevant proposition of law on this score. In our opinion, the very aim, design and desideratum of the provisions of section 33-C (2) of the I.D.Act, while viewed in the light of the benevolent legislation, and that too, in absence of any specific provision with regard to

> prescription of time for the recovery of amount with the help of section 33-C (2), cannot be construed to limit and circumscribe the right of the workman for the recovery of the legitimate dues payable by the master or the management concerned. In our opinion, therefore, rejection of the claim in the impugned judgment of the learned single Judge on the ground of delay is not justified. We may make it clear that failure of the Legislature to make any provision for limitation cannot be deemed to be an accidental omission. In the facts and circumstances and keeping in mind the benign provisions, of a weaker sections of the society, it would be legitimate to infer that the Parliament in its wisdom deliberately did not provide for any limitation under section 33-C (2). Even from the different perception, a workman or a person who is the beneficiary under section 33-C (2) of the ID Act, hails from a lower strata of the society and he would not be conscious of the period of limitation for the recovery of legitimate dues. In all probabilities, this may be one of the reasons, the Parliament has not prescribed the period of limitation for the recovery of said dues while incorporating provisions in section 33-C(2) of the ID Act....."

Accordingly, the appeal was allowed with an order to pay the due amount within a prescribed time failing which the petitioner was ordered to pay interest @ 12% with an order to pay costs quantified at Rs.2,000/-.

5. The aforesaid judgment and order of the Division Bench was carried in appeal before the Supreme Court in Special Leave to Appeal (Civil) No.14231 of 2001 wherein an order as under was made on 5.11.2001:

> "We do not think it is appropriate in exercise of our jurisdiction under Article 136 of the Constitution of India to interfere in this case where, the Courts below have found that on merits the respondent is entitled to overtime allowance his claim having been sought to be defeated only on the ground of delay. The Special Leave Petition is dismissed."

6. In view of the orders as above against the petitioner itself, it was fairly conceded that this petition awaited and deserved only one terminal order, that of dismissal. Accordingly, the petition is dismissed

and Rule is discharged with no order as to costs. Interim Relief stands vacated.

Sd/-

( D.H.Waghela, J.)

(KMG Thilake)